IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

Bail Appl..No. 6357 of 2007()

CMP.4784/2007 of J.M.F.C.-I, CHERTHALA
CRIME NO.343/07 OF CHERTHALA POLICE STATION

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PETITIONER : 2ND ACCUSED:

ABDUL BASHEER, S/O.ABDUL RASHID,
MOOZHIYIL HOUSE, CHAKKAKONAM P.O.,
KARAKULAM, NEDUMANGAD.

BY ADV. SRI.T.A.UNNIKRISHNAN
SRI.K.SATHEESH KUMAR

RESPONDENTS: COMPLAINANT:

STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO. 6357 OF 2007

Dated this the 22nd day of October, 2007

ORDER

Application for regular bail. The petitioner faces allegations under the Kerala Abkari Act. The petitioner, along with another, was allegedly engaged in the activity of transporting 1225 litres of spirit in an Innova car. The police wanted the vehicle to stop. The vehicle was not stopped. Ultimately, the vehicle was intercepted. The petitioner took to his heels and could not be arrested. The co-accused was arrested. The petitioner's name is not given in detail in the F.I.R. The investigation revealed the complicity of the petitioner. The petitioner surrendered on 13/9/07. He continues in custody from 13/9/07. The learned Public Prosecutor submits that the petitioner has no criminal antecedents at all as ascertained till now.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. According to him, not he; but some other had taken the car on rent and had indulged in the alleged illegal activity. The petitioner is not responsible for the alleged offence. He may now be enlarged on bail, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. Though the petitioner is not shown to have any criminal antecedents, the State is obliged to oppose the application considering the nature and quantum of the contraband article which is seized. All available indications clearly point to the complicity of the petitioner and, in these circumstances, the petitioner, who had surrendered only on 13/9/07, may not be enlarged on bail, submits the learned Public Prosecutor.

4. I have considered all the relevant inputs. An earlier application for anticipatory bail filed by the petitioner was dismissed as per the order dated 23/8/07 in B.A.No.5079/07. I have adverted to the facts in detail in the said order. This order must be read in continuation of the said order. I am hence not adverting to the facts in any greater detail in this order.

5. In the wake of opposition by the learned Public Prosecutor, bail can be granted to the petitioner only if this

Court is in a position to entertain both the satisfactions contemplated in Sec.41A of the Kerala Abkari Act. At the moment and with the available inputs, I am unable to entertain either of those two satisfactions.

4. This petition, in these circumstances, deserves to be and is hereby dismissed; but with the observation that the petitioner shall be at liberty to move this Court or the courts below for bail at a later stage of the investigation – not, at any rate, prior to 5/11/07. The Investigator shall, in the meantime, make every endeavour to complete the investigation.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge